

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4002 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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UJAMBEN VIRJIBHAI,D/O VIRJIBHAI VEGAD & W/O BHIMJIBHAI BHUVA

Versus

HIMANSHU PRABHASHANKAR JOSHI

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Appearance:

MR SS BELSARE, Advocate for Petitioner

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE M.C.PATEL

Date of decision: 03/11/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant challenges the order dated 6th January, 1997 made by the learned Civil Judge (Senior Division), Junagadh in Civil Misc. Application No. 55/94 issuing succession certificate in the name of the original applicant in respect of the service benefits available to the deceased.

The application for succession certificate was made by the respondent No.1, who is the son of the sister of deceased Chhelashankar Dalpatram Thakkar, who passed away on 24.7.1994. During his life time, the deceased had served with the Gujarat Electricity Board. According to the original applicant, the deceased had no other legal heir. The original applicant being sister's son of the deceased, was a class -II heir of the deceased, under Section 8 of the Hindu Succession Act.

The notice of the application for succession certificate was duly issued and published and the appellant filed her objections at Ex.9 contending that she was nominated to receive payment of gratuity from the Gujarat Electricity Board and therefore, in view of the provisions of Section 4 of the Payment of Gratuity Act, being a nominee, she was entitled to receive the amount of gratuity. The lower Court took note of the fact that there was no dispute regarding the relationship of the original applicant and the original opponents Nos. 1 to 3 with the deceased and the only question which remained to be determined was whether the objector who was a nominee, had a right to receive the amount of gratuity under the nomination. It was held that the deceased had no other relatives and the original applicant and the original opponents 1 to 3 who were the legal representatives, had a right to get succession certificate in respect of the estate of the deceased and the nominee would not by virtue of nomination have any preferential right to appropriate the amount in question. Admittedly, the original opponents Nos. 1 to 3 had no objection if succession certificate was issued in the name of the original applicant and they had filed affidavits to that effect at Exhibits 29 to 31.

In the context of the present controversy, we may refer to the decision of the Supreme Court in the case of (Smt.) Sarbati Devi and anr. Vs. Usha Devi, reported in 1984 GLH 490, in which the Hon'ble Supreme Court, dealing with the provisions of Section 39 of the Insurance Act, 1938, held that a mere nomination made under Section 39 did not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount however, can be claimed by the heirs of the assured in accordance with the law of succession governing them. It was held that on the death of the

policy holder, the amount payable became part of the estate which is governed by the law of succession applicable to him and that there was no warrant for the proposition that Section 39 of the Act operates as a third kind of succession which is styled as a "statutory testament".

Under Section 4(1) of the Payment of Gratuity Act, 1972, gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease. Under the second proviso to Section 4(1), it is laid down that in the case of death of an employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heir is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority. It is obvious from this proviso that it only indicates the hand which receives the amount of gratuity and does not make the nominee as the absolute owner of the amount. The said proviso is not intended to disturb the normal line of succession and it only, by providing that the nominee should be given the amount, would absolve the employer from any liability in respect of any payment in accordance with the nomination. In this view of the matter, we are of the opinion that the trial Court rightly granted succession certificate to the original applicant. We find ourselves in complete agreement with the reasoning of the trial Court for reaching its conclusions. The appeal is therefore, summarily dismissed.

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\*/Mohandas